IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUIT NO. 742 of 1987

Master Vinit P. Chitlekar & ors. .. Plaintiffs

versus

Life Insurance Corporation & ors. .. Defendants

...

Mr.H.N. Walawalkar for the plaintiffs.

None for the defendants.

CORAM : D.G. KARNIK,J.

DATED : 15th January 2007.

P.C.:

1. Heard counsel for the plaintiffs. None present for the defendants.

2. Plaintiffs no.1 and 2 are the son and daughter rerspectively of late Shri Prakash Chitlekar who died on 12th September 1986. Prakash was married to Shipla @ Shailaja Laxman Dicholkar. Shilpa gave

birth to two children who are the plaintiffs herein. The marriage between Prakash and Shailaja was dissolved by a decree of divorce dated 24th September 1984 passed by Joint Civil Judge , Sr. Division Thane. During his lifetime Prakash had taken out two insurance policies viz. Policy No.1819034 for Rs.10,000/- and Policy No.22116961 for Rs.50,000/- with Life Insurance Corporation of India, the defendant no.1 herein. Prakash died on 18th September 1986 leaving behind him the plaintiffs as his two children and the mother who is defendant no.2 as the only heirs of class I. On death of Prakash, the plaintiffs through their natural mother Shilpa demanded the amount of Insurance Policies taken out by Prakash. The defendant no.1 replied that the deceased Prakash had nominated one Smt.Jyoti Vibhakar Pradhan the defendant no.3 herein as the nominee to receive money under the policies and therefore, the money cannot be paid to them. The defendant no.1 also informed the plaintiffs to obtain the necessary order of injunction from a competent court failing which the money under the policies would be paid to the nominee - the defendant no.3.

3. The defendant no.3 who is the nominee of the

insurance policies claims to be the sister of Prakash. According to the plaintiffs, the defendant no.3 is not the sister and is not related to Prakash at all. Assuming however that she is the sister, she is not an heir of class-I and therefore she is not entitled to the amount of insurance policies. According to the plaintiffs, the mere fact that the defendant no.3 has been nominated as a nominee would not give her any right, title and interest in the insurance money. At the most as a nominee, she was entitled to receive the money for an on behalf of the legal heir of Prakash i.e. present plaintiffs and defendant no.2. The plaintiffs claim that each of them has 1/3rd share and defendant no.2 who is the mother of deceased Prakash has 1/3rd share in the amount of insurance policies. They have therefore prayed for a decree against the defendant no.1 for the amount of the policy.

4. During the pendency of the suit, the plaintiffs applied for an interim injunction restraining the defendant no.1 from making the payment to defendant no.3. Accordingly, in Motion no.2314 of 1987, an injunction was granted restraining the defendant no.1 from making the

payment of the insurance policies to the defendant no.3. Learned counsel for the plaintiff submits that the defendant no.2 LIC has thereafter deposited the entire amount of the insurance policies in this court.

5. The defendant no.1 LIC appeared in the suit but has not filed a written statement. It has not denied that the deceased Prakash had taken out the two insurance policies mentioned in the letter. By the letter dated 18th January 1987 it had requested the plaintiffs through their mother to obtain a prohibitory order from the competent court failing which the payment under the policies would be made to the defendant no.3. It is thus not in dispute that the deceased Prakash had taken out the two insurance policies mentioned in the plaint.

6. The defendant no.2 i.e. the mother of Prakash appeared in the matter through a lawyer Mr.V.K. Parab. She however has not filed any written statement traversing averments made in the plaint.

7. The defendant no.3 has not filed any

appearance though served. An affidavit of service dated 25th February 1988 sworn in by Dattatraya Kalke, clerk in the office of the advocate for the plaintiff has been filed on record.

8. In the suit following issues arise for my consideration:

ISSUES

1. Whether the plaintiffs prove that they and the defendant no.2 are the only heirs of class-I of the deceased Prakash?

2. Whether the nomination in favour of the defendant no.3 of the insurance policies could confer any right, title and interest in amount of the insurance policies in defendant no.3?

3. What order?

For the reasons mentioned below, my answers to the issues are

Issue No.1 In the affirmative

Issue No.2 In the negative

Issue no.3 As per the order below.

9. On behalf of the plaintiffs, plaintiff no.2 Shaishavee P. Chitlekar filed an affidavit in lieu of examination in chief. The facts stated in the affidavit are uncontroverted as none of the defendants were present when called for cross examination, when called. Plaintiffs have produced on record the certified copy of the decision of the Civil Judge, Sr. Division in Marriage Petition no.228 of 1984, certified copies of their birth certificates, certified copy of the death certificate of their father Prakash, office copy of the notice issued by them through their mother to the defendant no.1 LIC and the original reply dated 28th January 1987 sent by the defendant no.1. The documents are taken on record and marked Exhibit-A, Exhibit-B, Exhibit-C, Exhibit-D, Exhibit-E and Exhibit-F respectively. Certified copy of the decision of the Civil Judge, Sr. Division in Marriage Petition no.228 of 1984 shows that Prakash married to Shilpa and that the marriage between them dissolved by a

decree of divorce on 24th September 1984. Shilpa being the divorce ceased to be his wife and therefore is not an heir of class-I of Prakash. The two birth certificates shows that the plaintiff no.1 Vinit was born to Prakash on 27th March 1979 and plaintiff no.2 was born to Prakash on 20th September 1982. The plaintiffs are thus the children of Prakash. The plaintiffs have admitted that Prakash left behind her his mother, the defendant no.2 herein. The plaintiffs and the defendant no.2 are the heirs of Class-I of Prakash. I accordingly answer issue no.1 in the affirmative.

10. Learned counsel for the plaintiff invited my attention to the decision of the Supreme Court in Smt. Sarbati Devi Vs. Usha Devi reported in AIR 1984 SC 346. In that case, the Supreme Court has held that the mere nominations made u/s.39 of the Insurance Act does not have the effect of conferring on the nominee any beneficial interest in the amount payable under a Life Insurance Policy on the death of the assured. The nomination only indicates that the nominee is authorised to receive the amount on payment of which the insurer would get discharge under the liability of the policy. The amount of the

policy can however be claimed by the heirs of the assured in accordance with law of succession governing them. The defendant no.3 is therefore not entitled to receive the money on her own account not can she claim any beneficial interest in the amount. Learned counsel for the plaintiffs submitted that the money has been deposited by the defendant no.1 LIC in this Court. The plaintiffs and defendant no.2 being the heirs of Class-I of the deceased Prakash are entitled to the said money equally. Accordingly, each of the plaintiffs is entitled to 1/3rd share in the amount of the insurance policies and defendant no.2 is entitled to the remaining 1/3rd share. For these reasons, suit is decreed as follows:-

11. The plaintiff no.1, plaintiff no.2 and defendant no.2 are each entitled to 1/3rd share in the amount of the insurance policies. The defendant no.1 shall accordingly pay the amount of the insurance policies mentioned above to the plaintiff no.1, plaintiff no.2 and defendant no.2 by paying each of them 1/3rd of the amount of the insurance policies. If the amount has already been deposited in the court, the plaintiff no.1, plaintiff no.2 and defendant no.2 shall each be entitled to withdraw

1/3rd of the money from the court together with the interest, if any, which may have accrued on investment of the money deposited in the court. Since the defendants have not contested in the suit, there shall be no order as to costs.

D.G. KARNIK, J